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IN THE

Supreme Court of the United States

October Term, 1949

No. [redacted]61

SAMUEL L. DAVIS, Individually and on Behalf of Others Similarly Situated,

Petitioner,

vs.

E. S. COOK, *et al.*, Constituting the Board of Education of the City of Atlanta.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

A. T. Walden,
Oliver W. Hill,
Thurgood Marshall,
Robert L. Carter,
Attorneys for Petitioner.

Howard Jenkins, Jr.,
James M. Nabrit,
Of Counsel.

IN THE

Supreme Court of the United States

October Term, 1949

No. 808

SAMUEL L. DAVIS, Individually and on Behalf of Others Similarly Situated,
Petitioner,

vs.

E. S. COOK, *et al.*, Constituting the Board of Education of the City of Atlanta.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

This supplemental brief in support of our petition for writ of certiorari is being filed in order to bring to the Court's attention the decision of the United States Court of Appeals for the Fourth Circuit handed down on May 31, 1950, in *Carter, et al.* v. *School Board,* 182 F. 2d 531, which is in direct conflict with the decision of the court below in the instant case.

In the *Carter* case, relief was sought in the federal courts by Negro high school students residing in Arlington County, Virginia, who had applied for and had been refused certain courses and advantages being offered to all other high school students in the county. The basis of the action was that the equal protection clause of the Fourteenth Amendment had been violated in that plaintiffs were being denied educational opportunities and advantages, because of race and color, available to all other persons similarly situated.

After hearing and trial, the United States District Court found that the educational advantages and opportunities afforded plaintiffs were substantially equal to those afforded all other persons and dismissed the complaint. On appeal, the United States Court of Appeals for the Fourth Circuit found that the educational advantages and opportunities available and offered to white high school students were not available and were not offered to Negro high school students. Thereupon the cause was reversed and remanded.

One of the defenses raised was that the plaintiffs had not exhausted available administrative remedies and that, therefore, the resort to the federal courts for relief was premature. In passing upon that defense, the Court of Appeals stated at page 536:

> "Nor can it be said that a scholar who is deprived of his due must apply to the administrative authorities and not to the courts for relief. An injured person must of course show that the state has denied him advantages accorded to others in like situation, but when this is established, his right of access to the courts is absolute and complete."

In the instant case, petitioner is a Negro teacher, alleging a denial of the equal protection of the laws, in that he and other Negro teachers are being paid less salary than is being paid to white teachers performing substantially the same functions. In the *Carter* case, the plaintiffs are Negro students of public school age, alleging a denial of the equal protection of the laws in that educational advantages and opportunities available to white high school students are not available to Negro high school students, solely because of race and color. In both instances, the problem is substantially identical—whether a state may provide better and greater advantages to white persons than it affords to Negroes, in similar circumstances, solely because of race and color.

In light of the opinion in the *Carter* case, it is clear that had petitioner's cause been before the Court of Appeals for the Fourth Circuit that that court would have affirmed the judgment in his favor, and that the defense of failure to exhaust administrative remedies would not have been available to respondents.

We pointed out in our petition and main brief in support thereof that the court below in remanding the instant action on the grounds that petitioner had failed to exhaust administrative remedies was in apparent conflict with the opinion of the United States Court of Appeals for the Ninth Circuit in *Trans-Pacific Air Lines* v. *Hawaiian Air Lines*, 174 F. 2d 63. Now the decision of the court below is also in conflict with the decision of the Court of Appeals for the Fourth Circuit in *Carter, et al.* v. *School Board, supra.* The conflict between the Fifth Circuit, on one hand, and the Fourth and Ninth Circuits on the other, should be resolved by this Court.

Wherefore, it is respectfully submitted, for the reasons stated in our petition and brief in support thereof and in this supplemental brief, that the petition for writ of certiorari should be granted, and the judgment of the court below should be reversed.

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Robert L. Carter,
Attorneys for Petitioner.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1949.

No. 61

SAMUEL L. DAVIS, Individually and on Behalf of Others Similarly Situated,
Petitioner,

v.

E. S. COOK et al., Constituting the Board of Education of the City of Atlanta.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1949.

No. 808.

SAMUEL L. DAVIS, Individually and on Behalf of Others Similarly Situated,
Petitioner,

v.

E. S. COOK et al., Constituting the Board of Education of the City of Atlanta.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

Respondents respectfully submit this brief in opposition to the grant of the writ of certiorari in the above stated cause.

They show that the writ should be denied for the following reasons:

1. The petitioner has not complied with Paragraph 1 of Rule 38 of this Court in that the petition was not accompanied by a certified transcript of the record in the case, including the proceedings in the court to which the writ is

asked to be directed. On the contrary, petitioner seeks a review in this Court by bringing forward only the pleadings, including the opinions of the District Court and the Court of Appeals, and certain exhibits, omitting all of the oral testimony and most of the documentary evidence. This evidence was before the Court of Appeals, and the conclusions of the Court of Appeals regarding the findings of the trial court were based upon this evidence, which is not before this Court.

2. The case does not fall within any of the classes of cases enumerated in subdivision 5 (b) of Rule 38.

The case is reported below as **Cook et al. v. Davis et al.**, No. 12,727, 178 F. (2) 595.

STATEMENT.

This case was tried in the District Court for the Northern District of Georgia, where certain findings of fact and conclusions of law were entered by the District Judge. Judgment for the plaintiff there was reversed by the Court of Appeals for the Fifth Circuit with direction.

The suit is one to enjoin alleged discrimination on account of race or color in the payment of salaries to school teachers in the City of Atlanta. The complaint also sought declaratory relief that such discrimination existed. A brief resumé of the facts may be helpful, since the complete record is not before the Court.

School teachers are paid in Georgia partly by State funds and partly by local funds. Atlanta is known as an independent system, that is, it has the same standing as a county school system, but is governed by a City Board of Education instead of a county board of education. The

persons who constitute the City Board of Education are the defendants here.

The Atlanta Board, as said by the Court of Appeals, "devised a nondiscriminatory scheme of individual classification and salaries with which no fault is found," which provided for the classification of all teachers on a basis of individual worth by committees established for that purpose. The Superintendent was not a member of the committee, but provision was made for appeal to the Superintendent by any teacher who was dissatisfied with the action of the committee. The committee consisted of the Assistant Superintendent and certain white and colored supervisors. There were separate committees for white high school teachers and colored high school teachers, and separate committees for the white and colored grammar school teachers.

It was provided that any teacher who was dissatisfied with the action of the Superintendent on appeal could request the Board of Education to review the Superintendent's action, the only procedure required being that the request be made in writing within ten days from the action of the Superintendent.

All of the teachers were classified for the school year beginning September, 1944. Each teacher was notified of his classification and of what his basic salary would be.[1]

There were no formal appeals from the placement committees to the Superintendent. There were some informal appeals, all of which were handled satisfactorily to the complaining teacher, about equally divided between white and colored teachers. There were no appeals, formal or informal, from the Superintendent to the City Board, and no appeals of any sort to the State Board of Education,

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1 There was a supplement, called a bonus, of the basic salary, uniform in percentage as to all teachers.

which has general appellate jurisdiction under the laws of the State.

The points presented to the Court of Appeals were:

(1) Should the motion to dismiss have been sustained?

(2) Are the findings of fact and conclusions of law of the trial judge authorized by the record and the evidence?

The Court of Appeals for the Fifth Circuit reversed the trial judge and directed "that the cause be remanded to the District Court and remain pending for a reasonable time to permit exhaustion of administrative remedies; and thereafter such further proceedings may be had as shall then appear to be proper."

BRIEF AND ARGUMENT.

1.

The Petition Fails to Comply With the Rules.

As we understand Paragraph 1 of Rule 38, it requires that a petition for certiorari be accompanied by certified transcript of the entire record in the case, including the proceedings in the court to which the writ is asked to be directed. Petitioner here has filed as the record the **printed** portion of the record in the Court of Appeals for the Fifth Circuit, which is numbered pages 1 through 68 of the printed record here. To this he has added printed pages numbered 69 to 95, both inclusive, appearing in the printed record here, which contain certain extracts from the minutes of the Court of Appeals showing argument and submission to that Court, the opinion and judgment of the Court of Appeals, and the petition for rehearing, with the order denying it.

In addition to this printed record in the Court of Appeals, petitioner has had transmitted as original documents from the District Court Plaintiff's Exhibits Nos. 11, 12, 13, 14 and 30, introduced in evidence in that Court.

It will be noted from page 68 of the printed record here, which page contains a certificate of the Clerk of the District Court to the Court of Appeals, that the pages certified by him as correct contain a correct copy of the original record "except original physical exhibits and reporter's transcript of evidence."

There was filed in the Court of Appeals a motion by attorneys for appellants (respondents here) that the original documentary evidence and the reporter's transcript of the parol testimony be transmitted to the Court of Appeals. This petition or motion was consented to by attor-

neys for appellee (petitioner here), who joined in the request. There was an order by the Senior Judge of the Court of Appeals for the Fifth Circuit granting the motion as prayed for. For the Court's information, we attach to this brief as an exhibit a certified copy of this proceeding, which is also omitted from the record filed here.

Apparently the documentary evidence and the reporter's transcript of the parol testimony were returned to the District Court with the mandate of the Court of Appeals, for counsel for petitioner on April 6, 1950, procured an order from the District Judge authorizing the Clerk to certify and transmit to the Supreme Court of the United States such portions of the original exhibits and records as might be requested by counsel.

Paragraphs 7 and 8 of Rule 38 of this Court relate to the printing of the record, and paragraph 8 contemplates that counsel by agreement dispense with printing any unnecessary part of the record where it has to be printed for this Court. No such agreement has been made. But this has nothing to do with paragraph 1, which requires that the entire record be transmitted.

Petitioner here seems simply to have failed to comply with the rules, and that we think is and should be ground for denying the writ.

Apparently petitioner seeks to excuse the absence of the evidence by the statement in the petition (page 4), "The findings of fact of the District Court, beginning at page 40 of the record and reported in 80 F. Supp. 443, are adopted and accepted by the petitioner as a correct statement of the facts of the case and these findings were not disputed by the Court of Appeals."

We do not think this adoption of the facts as stated by the District Judge can justify a failure to comply with the

rules of this Court. But we cannot agree with petitioner that the Court of Appeals did not dispute the findings of the District Judge. To the contrary, the Court of Appeals, 178 F. (2) 599, made a detailed examination of the parol testimony and was dissatisfied with the weight given to it by the District Court. The Court of Appeals said:

> "The Superintendent and the defendants who testified say they are making a sincere, diligent and successful effort to classify all their teachers according to their individual worth as teachers. No teacher but Davis (the plaintiff) testified, and **he makes a very unimpressive case for himself.**" (Emphasis supplied.)

The Court further said:

> "The decree is very vague; it could not be of much practical help to the Board. Nor could it be easily enforced, for it only states in general terms a duty which no one disputes, with no specifics at all pointed out."

The Court of Appeals also did not agree with the conclusions of the District Judge concerning the remedy by appeal. The Court of Appeals said:

> "The appeal to the Atlanta Board from the decisions of the Atlanta Superintendent and her aides as to individual placements and salaries is not to the same persons who did the wrong. The Board, after the ten days allowed for appeal, makes annual contracts with the teachers recommended by the Superintendent at the salaries recommended, but if the Superintendent erred in making the recommendations, the members of the Board had no part in it, and may properly act to correct it. The State Board is even further removed from the error of the Atlanta Superintendent."

It is impossible for this Court to determine whether the conclusions of the Court of Appeals upon the facts are proper without the evidence before it.

Without the evidence before it, the Court cannot determine whether the Court below was right in concluding that the plaintiff had never appealed from his classification and placement on the salary scale.

The court below said:

> "The new Superintendent, Miss Jarrell, testified that Davis made no complaint; and since this suit was pending she asked him if he was still dissatisfied, and he said he 'thought we were doing the best we could'; and she asked him to come and talk about his salary, but he never did. A few other teachers complained to her, and each complaint was satisfactorily adjusted. No one has ever appealed to the Atlanta Board or the State Board. Neither Davis nor any other witness denies this."[2]

In his brief petitioner claims, "Petitioner has conclusively proved that he and other Negro teachers and principals are being discriminated against in the administration of the salary scale and schedule under which the Atlanta Board of Education is operating."

We deny the correctness of this bold statement, but its correctness depends upon the evidence, which is not here. This Court should not undertake to review a conclusion of the Court of Appeals that the only testimony in the record

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2 Actually the testimony of Miss Jarrell is a little stronger than that. Concerning Davis she testified:

> "He came into my office and talked to me at one time about another matter, and I asked him why he didn't come in and talk about his salary if he was dissatisfied, and he said at that time he thought we were trying to do the best job we possibly could, and he was moving (advancing in salary) and he was satisfied."

We take the quotation from the appendix to the brief filed in the Court of Appeals.

was that of Davis, and that he made a very unimpressive case for himself without the evidence before it.

As a matter of fact, the District Court and the Court of Appeals both say that the salary schedule adopted by the Atlanta Board is not discriminatory on its face. Whether or not it discriminates against any teacher on account of race or color or for any other reason is a matter of fact and of proof. An administrative remedy was provided for detecting discrimination, if any existed, and for detecting any injustice done any teacher for any reason. But the plaintiff did not avail himself of his administrative remedy, nor did he testify to discrimination against himself on account of race or color or for any other reason. No other teacher testified and the whole claim of discrimination is based entirely on figures.

2.

The Case Is Not a Proper One for Issuance of the Writ of Certiorari.

Respondents see in this case no such unusual situation as to justify review by this Court. Had there been a ruling below adverse to petitioner upon the legal merits of the right of a Negro school teacher not to be discriminated against on account of race or color in the matter of payment of salary, the case might have been proper for adjudication here.

Nobody has disputed this legal right of the plaintiff, and the court below did not decide that against him.

If the court below had said, as respondents insisted it should say, that under the ruling by this Court in **Larson v. Domestic & Foreign Commerce Corporation,** 337 U. S. 682, and cases there cited, the suit was in purpose and effect one against the State of Georgia, there might have

existed good ground for reviewing that conclusion by writ of certiorari. But the Court did not so hold. It ruled in petitioner's favor on that question.

The court considered, and consideration was proper, the evidence below both on the question of whether or not the plaintiff had followed his administrative remedy and whether he had shown discrimination against himself. The court believed that inasmuch as under the evidence the classification and salary of each teacher was reviewed every year, any dissatisfaction should be tested by an appeal. It said:

> "As each year's classifications and salaries are fixed, the appeals there provided ought to be used. But failure to use that provided since the filing of the suit ought not justly to cause dismissal of the suit now . . . But . . . we think the decree ought to have been withheld till the remedies then available shall be exercised, because a pursuit of them may cause an adjustment of the controversy and will certainly bring to a focus the particular wrongs so as to enable the court to frame a specific and useful decree . . . Therefore, upholding the court's jurisdiction, we set aside the findings and the decree as improvidently granted and direct that the cause be remanded to the District Court and remain pending for a reasonable time to permit exhaustion of administrative remedies; and thereafter such further proceedings may be had as shall then appear to be proper."

Thus it appears that the questions decided below were governed by the peculiar facts of the particular case.

We think clearly, therefore, the case does not come within the general rule concerning the granting of writs of certiorari.

Petitioner in his brief assigns a number of reasons why certiorari should be granted.

None of them is, we think, sufficient.

First, it is said that the State Board of Education is without jurisdiction to grant petitioner the relief he seeks. This contention is not tenable nor is it borne out by the authorities cited in the brief to support it.

The appellate jurisdiction of the State Board of Education embraces "all school matters which may be appealed from any county or city board of education." The decisions of the State Board of Education upon any such appeal "shall be final and conclusive." The Georgia statute so provides.

If the plaintiff was discriminated against in the fixing of his salary (and he did not so testify), he had a right to appeal from the committee that placed him to the Superintendent. He had a right to appeal from the Superintendent to the City Board of Education, and from the City Board of Education to the State Board of Education. He had a right to appeal if he was being inadequately paid, whether or not he was discriminated against on account of race or color or for any other reason. The remedy was entirely adequate. The decisions of the Georgia Supreme Court cited on the question simply do not hold anything to the contrary of what is here asserted.

Petitioner in general terms alleges that the provisions for appeal are inadequate. The comprehensive analysis of the procedure made by the Circuit Court of Appeals indicates that this complaint is without substance. The right of petitioner to assail the remedy for inadequacy is very doubtful in view of the fact that he did not appeal at all. This principle is firmly established in this Court. See **Lehon v. City of Atlanta**, 242 U. S. 53, at 56, 61 L. ed. 145, at 150, where this Court said:

> "To complain of a ruling, one must be made the victim of it. One cannot invoke, to defeat a law, an apprehension of what might be done under it, and which, if done, might not receive judicial approval."

The contention that the City Board of Education determines the salary and the placement of the teacher under the schedule in the first instance is simply not borne out by the record. The resolution of the Board provided for placement by the committees created by the resolution, and not for the placement by the Board itself. Nor is there any basis for the suggestion that the remedy by appeal is judicial. It is purely administrative and possesses none of the characteristics of a judicial remedy.

The contention that the appeal to the Atlanta Board was not to a disinterested party made by the statement of questions presented is also not borne out.[3]

The cases cited in this division of the brief, **Steele v. L. & N. R. Co.**, 323 U. S. 192, and **Tunstall v. Brotherhood of Locomotive Firemen and Enginemen**, 323 U. S. 210, do not support the contention. In those cases the Court said there was no administrative remedy.

The contention that under Georgia law and the decisions of Georgia courts, the administrative remedy provided is permissive and not mandatory, simply overlooks a rule stated by the Court of Appeals in this case:

> "Exhaustion of state remedies is a rule of self restraint formulated by the federal courts and is not influenced by state practice."

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3 Counsel who prepared the petition evidently did not participate in the case below, and have not considered the entire record, as they do not seem to be familiar with the testimony of retired teachers concerning conferences with members of the City Board, or with the undisputed testimony that petitioner not only made no effort to pursue his administrative remedy, but told Miss Jarrell, the Superintendent, he was satisfied.

There Is No Conflict Between Decisions of Courts of Appeal.

One of the grounds on which petitioner largely relies is an alleged conflict between the decision in this case and the decision of the Ninth Circuit in **Transpacific Air Lines v. Hawaiian Air Lines,** 174 F. (2) 63. Not only is there no conflict, but an examination of the Transpacific case discloses that the courts are in harmony. There, as here, the case was reversed with instructions to the District Court to retain it a sufficient length of time to permit the complainant to assert his administrative remedies. The discussion in the Transpacific case on which petitioner relies is clearly obiter. In the case at bar, the Court below followed the decision of this Court in **Myers v. Bethlehem Ship Building Company,** 303 U. S. 41, and **Natural Gas Pipe Line v. Slattery,** 302 U. S. 300, and its own decision to the same effect in **Bradley Lumber Co. v. National Labor Relations Board,** 84 F. (2) 97.

The opinion of the Court of Appeals does not conflict with the principles stated in Division 6 of petitioner's brief. The facts of the present case simply do not bring it within the rule there stated. This again makes manifest the inability of the Court to pass upon these questions without the evidence before it.

In paragraph 7 of their statement of points, petitioner overlooks the record again. The rule adopted by the Atlanta Board of Education does not, as stated, provide "a period of only ten days for taking an appeal to the Atlanta Board of Education."

The rule simply says "such request shall be made in writing within ten days from the action of the Superintendent." It does not require consideration and completion

of the appeal within ten days, nor does § 32-414 of the Code place a time limit upon appeals from the City Board to the State Board. The only requirement is that the appeal must be in writing and distinctly set forth the question of law as well as the facts in the case.

The contention of subparagraph 8 is simply not borne out by the record. The provision of the rule that "the Board shall consider such request and review the action of the Superintendent," as well as the requirement of the statute that the State Board "shall provide by regulation for notice to the opposite party and for hearing on the appeal," certainly do not contemplate failure of notice or denial of hearing.

This Court seems to us to have uniformly ruled that in a case such as the present one, where an administrative remedy is provided by state law or state rule, it must be exhausted before there can be resort to a federal court of equity, and this is so, as the Court of Appeals for the Fifth Circuit pointed out, because pursuit of the administrative remedy "may cause an adjustment of the controversy," and as the Court further pointed out, because it will certainly bring to a focus the particular wrong so as to enable the Court to frame a more specific and usable decree.

In the present case, the District Court in general language ordered that the defendants be enjoined against discrimination on account of race or color, a decree which it would be virtually impossible to obey, as this Court could readily determine if it had the record before it. This case is one in which the application of the principle that the administrative remedy must be first exhausted is peculiarly apt. Certainly in saying, as it did, that the case should be returned to the District Court for further proceedings, in order that the plaintiff might have an opportunity to exhaust his administrative remedy, the Court of

Appeals decided no new or novel question of law, such as to require review by this Court by the writ of certiorari.

Respectfully submitted,

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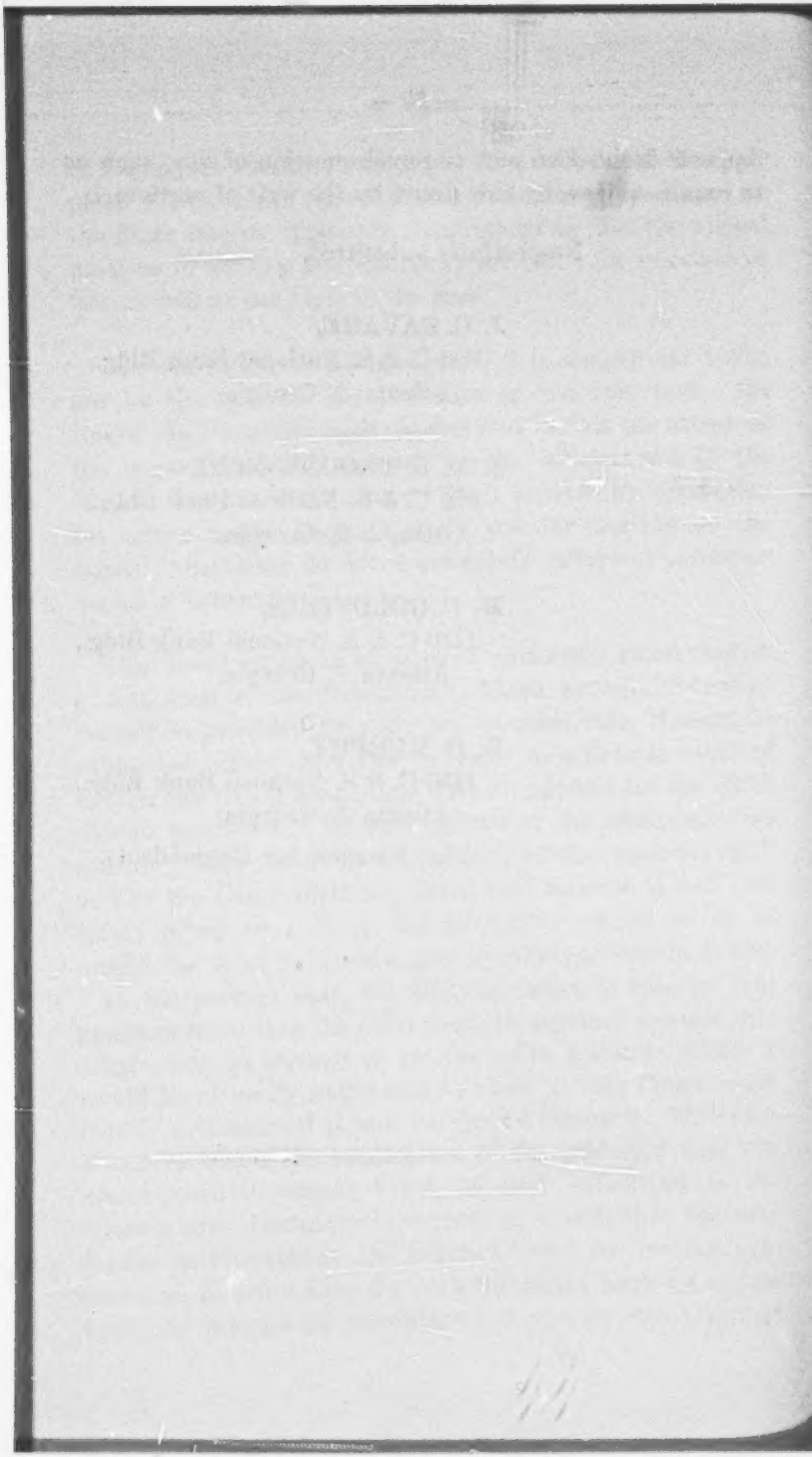

APPENDIX.

In the
UNITED STATES COURT OF APPEALS
For the Fifth Circuit.

E. S. Cook, Devereaux McClatchey, Jr., Charles C. Rife, J. H. Landers, D. M. Therrell and J. Austin Dilbeck, Constituting the Board of Education of the City of Atlanta,
Appellants,
versus
Samuel L. Davis, Individually and on Behalf of Others Similarly Situated,
Appellee.
} No. 12,727.

Appeal From the United States District Court for the Northern District of Georgia, Atlanta Division.

To the Honorable Judges of Said Court:

The petition of E. S. Cook et al. would show:

1. That they are the appellants in this court in the case of E. S. Cook et al., constituting the Board of Education of the City of Atlanta, Appellants, versus Samuel L. Davis, Individually and on Behalf of Others Similarly Situated, Appellee, being an appeal from a judgment of the Honorable E. Marvin Underwood, sitting without a jury, rendered on the 16th day of December, 1948.

2. That a timely notice of appeal was given, and said notice of appeal has been filed and docketed in this court.

3. These petitioners would show that they have been sued and they now appeal in their official capacity as members of the Board of Education of the City of Atlanta, and not personally. The funds within their control are public funds appropriated for educational purposes, the budget for which was prepared before the entry of the judgment in this case. Appellants in their official capacity have no other funds with which the cost of printing the record in this case can be paid. The Appellee and others in whose behalf he has brought this action are teachers in public schools, all of them being of limited means, and a great hardship would fall on them if eventually they were obliged to pay the cost of printing the record in this case.

4. The parties have therefore agreed and respectfully request that this court permit the evidence in the case to be transmitted to this court as original exhibits, thereby relieving them of the cost of printing the same. As additional grounds therefore, the petitioners and Appellants set forth below additional reasons for such action.

5. In addition to the oral evidence which has been transcribed by the official reporter, and two copies of which are available for filing in this court, the evidence consists of an analysis of the pay schedules and conclusions drawn therefrom, which were prepared for the Appellants by Jarvis Barnes, and for the Appellee by J. B. Blayton & Company. Each of these reports is very voluminous, and containing as they do a great many calculations and examples, would be extremely expensive to print.

6. In addition thereto the Appellants and Appellee have submitted schedules showing promotions that have been made and the conclusions drawn therefrom. It would be very difficult and expensive to print these exhibits.

7. The questions involved in this case can fairly be set forth in the briefs of the parties, together with the printing

as a supplement to the briefs of the matter in the record specifically relied upon by either party.

8. The Appellants have consulted the Appellee prior to filing this motion, and Appellee has no objection to the granting of this order.

Wherefore, the Appellants pray:

(a) That this court consider this petition for the transmission of the testimony and the exhibits to this court as original exhibits;

(b) That pending the determination of this motion, if this motion be not disposed of promptly, the time for the filing of the record be extended beyond March 8th, 1949, the time when the same expires under the order of the District Judge.

/s/ B. D. Murphy,
B. D. Murphy,
/s/ J. C. Savage,
J. C. Savage,
/s/ J. M. B. Bloodworth,
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The undersigned, as attorneys for Appellee, have carefully examined the foregoing petition and consent to the transmission of all the exhibits filed by both parties as original exhibits. Appellee also joins in the request that this court permit the reporter's transcript of the oral testimony to be sent to this court in lieu of the printed record.

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In the
UNITED STATES COURT OF APPEALS
For the Fifth Circuit.

No. 12,727.

E. S. Cook, Devereau McClatchey, Jr., Charles G. Rife, J. H. Landers, D. M. Therrell and J. Austin Dilbeck, Constituting the Board of Education of the City of Atlanta,

Appellants,

versus

Samuel L. David, Individually and on Behalf of Others Similarly Situated,

Appellee.

Appeal from the District Court of the United States for the Northern District of Georgia.

Order:

Pursuant to the motion of appellants for permission to bring up to this Court the transcript of evidence and all of the Exhibits as original Exhibits, and to dispense with the printing thereof, which motion is consented to by the attorneys for appellees,

It Is Ordered that said motion be, and the same is hereby, granted.

/s/ J. C. Hutcheson, Jr.,
U. S. Circuit Judge.